

Mr. Sankara Menon.—I beg to move that in section 8 an Explanation be added, viz., "For the purpose of this section, Our Government may decide who the Senior Official member is."

The necessity for this provision too appears to me patent. I think we require some sort of definition as to who should be the senior official member. Is it to be decided with reference to pay, or merely by office. There must be something to guide us. Now perhaps there is no difficulty. But such contingencies are by no means unlikely.

Seconded by Mr. Prince.

Carried.

Mr. Sankara Menon.—I have one more amendment, viz., "In section 9, line 2, insert the words "and place" between the words "time" and "of". This is also in view of a possible contingency. I do not know if it is an absolute rule that the President should hold the meetings of the Council only at the Capital.

Seconded by Mr. Ramier.

Carried.

Mr. Krishnaswamy Rao.—I beg to move that the Legislative Council Regulation Amendment Bill as now amended be read on a future day of which notice shall be given.

The motion was put and agreed to.

EVIDENCE BILL.

Mr. Prince.—In pursuance of the permission accorded to me at the last meeting of the Council, I now beg to introduce a Bill to consolidate and define the Law of Evidence.

'Evidence' in the language of English and Indian lawyers is, as stated by Mr. Stokes, "that which is offered by litigants in order to convince the Judge that "the facts alleged by them are true, or so probable that he ought, under the circumstances, to act upon the supposition that those facts are true. Evidence sufficient "to produce the desired conviction is said to amount to proof."

The object of all legal enquiry is the ascertainment of truth, and this end can hardly be better attained than by having a set of rules, which will be useful in guiding the judicial officer to have before him all the facts which are material to be considered in arriving at a correct decision on a particular issue, limiting the area within which such facts are to be found, and prescribing the ways in which such facts must be proved. In the absence of such rules there would be nothing to restrict the discretion of Judges in deciding which facts are relevant, or to set limits to the scope of any judicial enquiry. The result of this would be wastage of public time and unnecessary expense and vexation to litigants, not to speak of the serious danger to the cause of public justice by the main question at issue being lost sight of in a heap of collateral matter. Hence all civilized states have thought fit to provide themselves with definite rules of evidence, calculated to guard against such consequences and forming part of the adjective law of the country.

Thus in British India, we have Act I of 1872 which contains clear rules (1) declaring that nothing may be proved save a fact in issue or a fact relevant to the issue, (2) setting forth what facts are relevant and how such facts should be proved, and what facts may be taken judicial notice of, besides (3) containing provisions regarding presumptions, onus of proof, estoppel, competency and examination of witnesses.

We have no codified law of evidence in this State. When any question arises as to the admission of evidence, competency of witnesses or mode of proof, our Courts very often refer to the Indian Evidence Act as a guide, but in some cases refuse to follow the rules therein enunciated. Practically, therefore, they are left to decide such questions according to the dictates of 'equity, justice, and good conscience.' But "these attractive words," as well observed by Sir James Stephen, "mean little more than an imperfect understanding of imperfect collections of not very recent editions of English text books." The practice of our Courts, therefore, leaves the law uncertain, and hence the necessity for legislation on the subject.

In drafting the Bill which I have now the honor to introduce, I have closely followed the arrangement of the British Indian Act I of 1872. That Act contains, within the space of 167 sections, all the rules of evidence accepted by English law, which were considered to be necessary to meet the requirements of judicial enquiries in British India. It has stood the test there for the past twenty-five years, and as Sir James Stephen, the author, had the satisfaction to learn, "is generally understood, and has required little judicial commentary or exposition." The merits of this enactment and the excellence of its arrangement attracted the attention of eminent jurists in England, so much so, that Lord Coleridge, then Attorney-General invited Sir James Stephen, in the autumn of 1872, to draft a similar Code for England.

I am not, however, unmindful of the fact that Act I of 1872 has met with criticism at the hands of some competent authorities in India. The most important of these criticisms relates to the definition of the word "relevant" in section 3 of the Act. The definition there given is really no definition, as it says, "that facts are relevant to one another when they are connected with one another in any of the ways referred to in the provisions of the Act relating thereto". These provisions are contained in sections 6 to 16. Mr. Whitley Stokes observes—"It will appear on examination that these sections were framed under the erroneous supposition that 'relevancy means the connection of events as cause and effect: that they do not give the theory of relevancy in its simplest form: that they do not shew in themselves the principle on which they have been founded: that one of them (section 8), so far as it deals with the admissibility of evidence of statements, has nothing to do with relevancy strictly so called: that two of them (sections 10 and 12), are special rules covered by other sections; and that other two of them (sections 7 and 11) are so drawn as to permit evidence of matter wholly irrelevant". Sir James Stephen himself admitted that his theory of relevancy "was expressed too widely in certain parts and not widely enough in others". Mr. G. C. Whitworth of the Bombay Civil Service proposed to do away with these sections (6 to 16) altogether, and to substitute, in their stead, the following four rules:—

"Rule I. No fact is relevant which does not make the existence of a fact in issue more likely or unlikely, and that to such a degree as the Judge considers will aid him in deciding the issue.

"Rule II. Subject to rule I, the following facts are relevant:—

"(1) Facts which are part of or which are implied by, a fact in issue: or which shew the absence of what might be expected as a part of, or would seem to be implied by, a fact in issue:

"(2) Facts which are a cause, or which shew the absence of what might be expected as a cause, of a fact in issue:

"(3) Facts which are an effect, or which shew the absence of what might be expected as an effect of a fact in issue:

"(4) Facts which are an effect of a cause, or which shew the absence of what might be expected as an effect of a cause, of a fact in issue.

"Rule III. Facts which affirm or deny the relevancy of facts alleged to be relevant under rule II are relevant.

"Rule IV. Facts relevant to relevant facts are relevant."

Sir James Stephen himself appreciated these rules, and was of opinion that they "corrected and completed" "in a judicious manner" the theory expressed in his Act. But rather than substitute these rules for section 6 to 16, he proposed to remedy the defect by giving an entirely new definition to the word "relevant" in section 3. The new definition he proposed was:—

"The word 'relevant' means that any two facts to which it is applied, are so related to each other, that according to the common course of events, one, either taken by itself or in connection with other facts, proves or renders probable the past, present, or future existence or non-existence of the other."

I have adopted this definition of the word 'relevant' in the Bill, in preference to Mr. Whitworth's four rules, as the former fully meets, to my mind, the objections above noticed, without materially tampering with the sections of the Act. The adoption of this definition has enabled me to leave out section 11 of the Act, regarding which Mr. Justice West had occasion to make the following forcible remarks in *Regina v. Parbhudas Ambaram XI Bom : H. C. R. p 90*:—

"This section is expressed in terms so extensive that any fact which can, by a chain of ratiocination be brought into connection with another; so as to have a bearing upon a point in issue, may possibly be held to be relevant within its meaning. But the connections of human affairs are so infinitely various and so far-reaching, that thus to take the section in its widest admissible sense, would be to complicate every trial with a mass of collateral enquiries limited only by the patience and means of the parties."

The other criticisms on the Act relate to the differences between the English and Indian law as regards specific rules of evidence, and to certain omissions in the Act as it now stands. Mr. Stokes in his introduction to the Evidence Act, enumerates several instances of departure from the English law; but having given my careful consideration to the subject, I do not feel the necessity for importing into the Bill, the provisions of English law, which the Indian Legislature have thought fit to omit. No such amendments have yet been introduced in British India where the Act has been in force and working smoothly and satisfactorily for the past 25 years.

In regard to the omissions in the Act that have been pointed out, I have tried to supply such of them as have seemed to me desirable and necessary. These alterations are noticed in the statement of Objects and Reasons appended to the Bill. But I should mention here that Mr. Stokes suggests that the words 'fraud' and 'collusion' used in section 44 of the Act (section 43 of the Bill), should be defined. Eminent jurists, however, have held that these words cannot be defined satisfactorily. "It is impossible" says Wharton "to lay down a definition completely comprehending 'fraud, and no rule can, from the very nature of the subject, be invariable. Fraud 'is infinite.' I have therefore thought it undesirable to attempt a definition of these words."

Another suggestion of Mr. Whitley Stokes is, that to section 114 of the Act (section 112 of the Bill) dealing with rebuttable presumptions, a number of illustrations should be added, so as to indicate some of the presumptions relating to the existence of facts peculiar to India, which have been recognized by the British Indian Courts: such, for instance, as—(1) that a Hindu family is joint in food, worship and estate; (2) that a family once joint retains its status; (3) that all land is liable to assessment to Government revenue. Sir James Stephen, however, thinks that these presumptions belong to different branches of substantive law, and should not find a place in the Law of Evidence. Only such presumptions as "relate to facts merely as facts and apart from the particular rights which they constitute" are, in his opinion, worthy of being inserted in an enactment of this kind, comprising as it does, a portion of adjective law. I think there is much force in these remarks and have therefore not accepted Mr. Stokes' suggestion.

As far as I am aware, there has been no criticism on the Act, declaring any of its provisions objectionable or inapplicable to the present conditions of British India, but I have omitted sections 100, 113 and 166 of the Act, as being inapplicable to Travancore.

I wish, in conclusion, to observe that on going through the criticisms on the Act, I felt tempted at first to recast the sections in the light of those criticisms and remarks, but a careful consideration of the subject has led me to the opinion that it is best to retain the arrangement and language of the Act itself. My reasons are, that the Act is generally understood in Travancore and referred to by our Judges and practitioners, that students in our Law College have to study the Act with its commentaries as text-book to qualify themselves for the prescribed examinations in law, that references to the reported decisions on the Act of the British Indian Courts and the Privy Council would be rendered difficult, if the sections are tampered with, and that a Regulation which would need to be carefully studied and constantly applied from the day it comes into force should afford every facility to Judges and practitioners who are already familiar with the British Act. It is admitted on all hands that Act I of 1872 is one of the brightest achievements of the British Indian Legislature, and its provisions are based on well recognised general principles of the Law of Evidence.

With these remarks I now beg to introduce the Bill.

I beg also to move that the Bill, with the statement of Objects and Reasons, be published and that the principle of the Bill be brought up for consideration at the next ordinary meeting of the Council.

The motion was put and agreed to.

THE DEPARTMENTAL ENQUIRIES BILL.

Mr. Krishnaswamy Rao.—I beg permission to withdraw the Departmental Enquiries Bill which has been before the Council. It is considered to be defective in several respects. There is no provision for compelling the attendance of witnesses summoned if they fail to appear; it imposes no obligation on witnesses to state the truth in preliminary enquiries. Government have since passed an elaborate code of rules on the subject of enquiry into the conduct of public servants which renders the Bill in its present form not quite suitable.

Permission was granted accordingly.

Mr. Krishnaswamy Rao.—I now beg leave to introduce a new Bill in lieu of the one I have just withdrawn. It has already been circulated and the members, I am sure, have an idea of the lines on which it is drawn up.

The motion was put and agreed to.

Mr. Krishnaswamy Rao also introduced the Bill and moved that the Bill with the 'Objects and Reasons' be published in the Gazette.

The motion was put and agreed to.

PROBATE BILL.

Mr. Ramier.—As I have given notice I beg to move for leave to introduce a Bill relating to Probate. The necessity of a Probate Bill has already been discussed and I think that the sense of the Council is in favor of such an enactment.

The motion was put and agreed to.

The Council adjourned at 5-30 P. M.

SHUNGRASOBYER,
President.